MALAYAN UNION REPORTS.

KHOO EE LIANG AND OTHERS v. LAI KIM TONG AND 3 OTHERS.

[Appellate Civil Jurisdiction (Willan, C.J.)
August 27, 1947]

Rent and Charged Land (Restriction) Enactment (F.M.S.) 1940, Section 7 — Material time at which rent should be in arrears in order that a landlord may succeed in a suit in Court to recover possession of his premises — Position of sub-tenants when tenancy of principal tenant is lawfully terminated — Landlord and tenant.

This was a reference by the District Judge, Selangor, on the local law relating to landlord and tenant. The facts shortly were as follows:—The plaintiffs were the trustees of the estate of a deceased person, and a three storey house, No. 40 Broadrick Road, Kuala Lumpur, formed part of the estate. The first defendant was the principal tenant of that house, paying a monthly rental to the plaintiffs. The person named as the second defendant was a sub-tenant of the first defendant but was dead at the time of the action. The third and the fourth defendants respectively occupied the first and second floors of the house as sub-tenants of the first defendant, who himself occupied the ground floor of the house. On the 10th September 1946, the first defendant was in arrears with his rent from May to September 1946, both months inclusive and a notice to quit was served on him by the plaintiffs on that date. Rent was subsequently accepted by the plaintiffs from the first defendant but not beyond the date on which the notice to quit expired. Subsequent tenders of rent by the first defendant to the plaintiffs were refused by them. The third and fourth defendants have never been in arrears with their rents to the first defendant, the principal tenant. The learned District Judge referred the following questions for the opinion of the High Court:

(1) Under Section 7 of the Federated Malay States Rent and Charged Land (Restriction) Enactment 1940, what is the material time at which rent should be in arrears in order that a landlord may succeed in a suit in Court to recover his premises —

(a) the date of service of the notice to quit?

(b) the date of the filing of the plaint in a suit by the landlord to recover possession of his premises?

(c) the date of the issue of the summons to the defendant in such suit?

(2) Whether, if the tenancy of the principal tenant has been lawfully terminated, the subtenancies of the third and fourth defendants automatically cease on the termination of the tenancy of the first defendant, the principal tenant, and do they, the third and fourth defendants, thereby become trespassers? If they have become trespassers, is the consent of the Rent Assessment Board required before these two sub-tenants can be ejected?

(3) Has the District Judge's Court jurisdiction to deal with trespassers in view of the fact that the value of the subject matter of the suit, that is, the value of the whole house, is greater than one thousand dollars?

Held, (1) that the material date at which rent should have been in arrears for fourteen days under the proviso to Section 7 of the Federated Malay States Rent and Charged Land (Restriction) Enactment 1940, is the date on which the notice to quit is served on the defaulting tenant; (2) that after the determination of the first defendant's tenancy the relationship of landlord and tenant was created as between the plaintiffs, on the one hand and the third and fourth defendants, on the other hand, in respect of the first and second floors of the house and as the third and fourth defendants have never been fourteen days in arrear with their rent their tenancies could not be terminated without the permission of the Rent Assessment Board.

Cases referred to :—

(1) *Low Bee Hoe (w) v. Morsalim and Goh Tien Lim v. Lee Ang Chin* (1947) 13 M.L.J. 3.

(2) *Wagner and another v. Tan Eng Yeow* (1947) 13 M.L.J. 33.

(3) *Leonard v. Nachiappa Chetty* 4 F.M.S.L.R. 265.

(4) *P. V. Athimoolam Chettiar v. S. A. Athamsah and Company* (1946) M.L.J. 145.

REFERENCE by District Judge.

F. G. Charlesworth for the plaintiffs.

H. Y. Teh for the 3rd defendant.

Willan, C. J. : — This is a reference by the District Judge, Selangor, (Mr. Garton), under section 571 of the Civil Procedure Code, on the local law relating to landlord and tenant.

The facts, taken from the District Judge's reference and as stated before me by Counsel, are as follows :—

(a) The plaintiffs are the trustees of the estate of a deceased person, and a three-storey house, No. 40 Broadrick Road, Kuala Lumpur, forms part of that estate.

(b) The first defendant is the principal tenant of that house, paying a monthly rental to the plaintiffs.

(c) The person named as the second defendant was a sub-tenant of the first defendant but is now dead; why she was joined as a defendant is not clear to me.

(d) The third defendant occupies the first floor of the house as a sub-tenant of the first defendant, the principal tenant.

(e) The fourth defendant occupies the second floor of the house as a sub-tenant of the first defendant, the principal tenant.

(f) The first defendant, the principal tenant, retained for his own use the ground floor of the house.

(g) On the 10th September, 1946, the first defendant was in arrears with his rent from May to September, 1946, both months inclusive, and notice to quit was served on him by the plaintiffs on that date. Rent was subsequently accepted by the plaintiffs from the first defendant but not beyond the date on which the notice to quit expired. Subsequent tenders of rent by the first defendant to the plaintiffs have been refused by them.

(h) The third and fourth defendants have never been in arrears with their rents to the first defendant, the principal tenant.

The three questions which the District Judge requires answered are :—

(1) Under section 7 of the Federated Malay States Rent and Charged Land (Restriction) Enactment, 1940, what is the material time at which rent should be in arrears in order that a landlord may succeed in a suit in Court to recover his premises :—

(a) The date of service of the notice to quit?

(b) The date of the filing of the plaint in a suit by the landlord to recover possession of his premises?

(c) The date of the issue of the summons to the defendant in such suit?

(2) Whether, if the tenancy of the principal tenant has been lawfully terminated, the sub-tenancies of the third and fourth defendants automatically cease on the termination of the tenancy of the first defendant, the principal tenant, and do they, the third and fourth defendants, thereby become trespassers?

If they have become trespassers, is the consent of the Rent Assessment Board required before these two sub-tenants can be ejected?

(3) Has the District Judge's Court jurisdiction to deal with trespassers, in view of the fact that the value of the subject-matter of the suit i.e. the value of the whole house, is greater than one thousand dollars?

Question No. 1 :—

With regard to this question, the District Judge referred to two decided cases. First the case of *Low Bee Hoe (w) v. Morsalim and Goh Tien Lim v. Lee Ang Chin*[1], which is a decision of Worley J. on proviso (a) to section 8 of the Increase of Rent (Restriction) Ordinance, 1939, of the Colony of Singapore; and secondly to a decision of my own in *Wagner and another v. Tan Eng Yeow*[2] regarding the proviso to section 7 of the Federated Malay States Rent and Charged Land (Restriction) Enactment, 1940.

Before discussing these two cases it is necessary to set out in full section 8 of the Increase of Rent (Restriction) Ordinance, 1939, of the Colony of Singapore, and section 7 of the Rent and Charged Land (Restriction) Enactment, 1940, of the Federated Malay States, because the District Judge appears to have assumed, and his difficulties arise from that assumption, that the two laws are in *pari materia.*

Section 8 of the Increase of Rent (Restriction) Ordinance, 1939, of the Colony of Singapore, so far as is relevant is as follows :—

> From and after the first day of August, 1939, no landlord or sub-landlord shall without an order of the Board eject or apply to any Court for an order for the recovery of possession of any premises to which this Ordinance applies:
>
> Provided that this section shall not apply where —
>
> (a) any rent lawfully due from the tenant is in arrear for fourteen days;

Section 7 of the Rent and Charged Land (Restriction) Enactment, 1939, of the Federated Malay States, is as follows :—

> No landlord shall without the permission of the Board in writing eject or apply to any Court for an order for the ejectment of or take any step towards ejecting his tenant from any premises to which this Enactment applies: Provided that this section shall not apply to ejectment for non-payment of rent where rent at a lawful rate has been in arrear for fourteen days.

Comparing these two laws there are two essential differences between them. They are :—

(1) That the words "or take any step towards ejecting", which appear in section 7 of the Federated Malay States law do not appear in section 8 of the law of the Colony of Singapore.

(2) That in proviso (a) to section 8 of the law of the Colony of Singapore the words are "rent . . . . . *is* in arrear for fourteen days", whereas the words in the proviso to section 7 of the Federated Malay States law are "rent . . . . . *has been* in arrear for fourteen days".

Accordingly it is abundantly clear that the two laws are not in *pari materia;* they are distinctly different.

It is no use relying locally on a case decided on the law of the Colony of Singapore where the law of that Colony is not in *pari materia* with our local law. As to the danger of this I would refer to the case of *Leonard v. Nachiappa Chetty*[3] where the learned Judge said :—

> Before reliance can be placed on English decisions, particularly decisions on points of procedure, it is necessary in the first instance to examine carefully our local law and to ascertain what it is and in what respects it resembles or differs from the English law. This seems a self-evident proposition, but it is nevertheless too often over looked by Counsel.

In this case a similar self-evident proposition has been overlooked by the District Judge who, if he had examined the two sections set out above, could not have failed to have discovered that they are essentially

different, and that the decision of Worley J., cited above, could have no application to our local law.

In fact Worley J., himself, points out in his judgment that until 1941 the proviso to that section 8 of the law of the Colony of Singapore was as follows :—

> Provided that this section shall not apply to ejectment for non-payment of rent where rent has been in arrear for fourteen days after it had become due.

On this the learned Judge said :—

> That wording might well have supported an argument that it was sufficient to show that the rent had been at any time in arrear for fourteen days.

Thus it is clear that in that case the learned Judge, in deciding that the material date for the purpose of proviso (a) to section 8 of the Singapore Increase of Rent (Restriction) Ordinance 1939, is the date of the issue of the summons, did so largely because of the amendment in their law in 1941. If the Singapore law had remained unamended, that proviso (a) would have been in *pari materia* with our local proviso, and it is reasonable to assume, from the passage in Worley J's judgment set out above, that the learned Judge would have decided that the material date for the purpose of that proviso (a) would have been the date on which the notice to quit was served on the defaulting tenant.

Thus, that part of Worley J's judgment set out above supports my own decision in the case of *Wagner and another v. Tan Eng Yeow* (supra) in which I stated :—

> The provisions of the Federated Malay States Rent and Charged Land (Restriction) Enactment, 1940, are designed to protect tenants and sub-tenants only so long as they fulfil their legal obligations to their landlords. Payment of rent, when due, is one of those obligations, and failure to do so takes away the protection of that Enactment from the defaulting tenant. Once the rent has been in arrears for more than fourteen days the landlord is entitled to issue a notice to quit without the permission of the Rent Assessment Board. Once that protection is lost the tenant cannot regain it by paying the arrears of rent due, and the landlord does not waive his right of ejectment by accepting rent from the tenant up to the date of the expiration of the notice to quit.

I should have thought that this passage from my judgment sufficiently and clearly decided that the material date for the purpose of the proviso to section 7 of the Federated Malay States Rent and Charged Land (Restriction) Enactment, 1940, was the date on which the notice to quit was served on the defaulting tenant, but the District Judge appears to have thought otherwise. For reasons which are not apparent to me, he states in his reference that that judgment of mine does not bear upon the point under discussion in this question No. 1. Both Counsel intimated to me at the hearing of this reference that they informed the District Judge that I had decided this particular question. Therefore I am at a loss to understand why the District Judge referred this particular question to me in view of the fact that I had already decided it in the case of *Wagner and another v. Tan Eng Yeow* (supra). The District Judge should bear in mind that references such as this, in which Counsel are employed, are not made without expense to the parties concerned. If he had examined more carefully my previous decision (above referred to) and had not fallen into the trap of considering a decided case on the law of another Colony which is not in *pari materia* with our local law, he could have entertained no reasonable doubt on this question.

Accordingly, I decide again, what I have already decided previously, that the material date at which rent should have been in arrears for fourteen days under the proviso to section 7 of the Federated Malay States Rent and Charged Land (Restriction) Enactment, 1940, is the date on which the notice to quit is served on the defaulting tenant.

Question No. 2 :—

I now consider the question of whether the first defendant's (i.e. the principal tenant's) tenancy, having been lawfully terminated, the tenancies of his two sub-tenants — third and fourth defendants — are automatically terminated on account of the termination of that principal tenancy.

Before I consider the provisions of the Federated Malay States Rent and Charged Land (Restriction) Enactment, 1940, on this particular question, I would point out that in the Colony of Singapore, and also in England, the position of sub-tenants vis-a-vis head landlords is expressly stated.

In the Colony of Singapore, section 4 of the Increase of Rent (Restriction) Ordinance, 1939, provides that sub-tenants are deemed to be tenants of the landlord. That section is as follows :—

> Where a landlord has let, whether before or after the commencement of this Ordinance, any premises, and his tenant, who is not expressly prohibited in writing from sub-letting, sub-lets such premises or any part thereof the sub-tenants of such premises or any part thereof shall be deemed for the purpose of this Ordinance to be tenants of the landlord.

In England sub-section (3) of section 15 of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920, expressly provides that where the tenancy

of a tenant is determined then any sub-tenant of his becomes the tenant of the landlord. That sub-section is as follows :—

> Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

There are no such express provisions in our Rent and Charged Land (Restriction) Enactment, 1940, therefore one must construe that Enactment (bearing in mind that its intention is to protect tenants who fufil their obligations to their landlords) to see if sub-tenants, in a case such as this, are protected.

In the Rent and Charged Land (Restriction) Enactment, 1940, "landlord" includes only those persons who would be entitled to possession of premises (which also includes any part of premises) but for the existence of the Enactment. As I stated in the case of *P. V. A. Athimoolam Chettiar v. S. A. Athamsah and Company*[4] :—

> Now if an owner of a dwelling-house lets the whole of that house to a tenant, he, the owner, is out of possession and is clearly the landlord of that tenant. If the tenant sub-lets to another person the ground floor of those premises, retaining for his own use the first floor, then the tenant is out of possession of the ground floor, because it would be in the possession of that other person, and therefore, according to the definition of 'landlord' in the Enactment, the tenant would be the landlord of the person to whom he had let the ground floor and who was actually in possession of the ground floor. This could be taken further if the person in possession of the ground floor, who is really the sub-tenant, further sub-let one or more rooms on the ground floor.

Applying that statement to the present case (it is not disputed that the first defendant, as the principal tenant had power to sub-let to the third and fourth defendants) the position is :—

(a) The plaintiffs, as owners of the house in question, let the whole house to the first defendant. They, the plaintiffs are out of possession and clearly the landlord of the first defendant.

(b) The first defendant retained for his own use the ground floor of the house and sub-let :—

(i) The first floor to the third defendant,

(ii) The second floor to the fourth defendant.

Therefore the first defendant is out of possession of the first and second floors of the house and is clearly the landlord of the third defendant and also of the fourth defendant.

Now, bearing in mind that by section 3 of the Enactment "tenant" includes "sub-tenant", and also the definition of landlord referred to above, what happens when the tenancy of the first defendant is terminated? The third and fourth defendants, who have not been in arrears with their rent, still remain in possession on the first and second floors of the house.

The plaintiffs, the owners of the house, enter into possession of the ground floor because their tenant, the first defendant, goes out of possession, his tenancy having been lawfully terminated. But the plaintiffs are still out of possession of the first and second floors, though they would be entitled to possession of them but for the existence of the Enactment. This is clear from the definition of "landlord" in section 3 of the Enactment. Accordingly, from that state of affairs and from that definition, there is created, after the determination of the first defendant's tenancy, the relationship of landlord and tenant between the plaintiffs, on the one hand, and the third and fourth defendants, on the other hand, in respect of the first and second floors of the house. Accordingly the third and fourth defendants are not trespassers. Further, since they have never been fourteen days in arrear with their rent their tenancies cannot be terminated without the permission of the Rent Assessment Board.

Question No. 3 :—

In view of my answer to question No. 2, this third question does not arise.

In accordance with the provisions of section 573 of the Civil Procedure Code, I direct that a copy of this judgment, under the signature of the Registrar, Supreme Court, be transmitted to the District Judge, Selangor, and that on receipt thereof the District Judge shall proceed to dispose of the case in accordance with this judgment.

Before me all parties indicated that there should be no order as to costs on this reference, and no doubt the District Judge will bear this in mind when he comes to adjudicate finally on this matter.

Order Accordingly.

PUBLIC PROSECUTOR v. GOVINDAN KURUP AND 2 OTHERS.

[Orig. Crim. Juris. (Laville, J.) February 6, 1947]

Firearms and Ammunition (Unlawful Possession) Ordinance, 1946, Section 3,—Possession of pistol—Meaning of "possession"—Person to be in possession must have power to deal with thing as owner to the exclusion of all others.